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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,771	12/27/2005	Peter L. Fraenkel	11226/008	2877
27879	7590	11/21/2007		
INDIANAPOLIS OFFICE 27879			EXAMINER	
BRINKS HOFER GILSON & LIONE			LOPEZ, FRANK D	
ONE INDIANA SQUARE, SUITE 1600				
INDIANAPOLIS, IN 46204-2033			ART UNIT	PAPER NUMBER
			3745	
			NOTIFICATION DATE	DELIVERY MODE
			11/21/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentofficeactions@brinkshofer.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/536,771	FRAENKEL, PETER L.	
	Examiner F. Daniel Lopez	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on August 29, 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-25 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

***Response to Amendment***

Applicant's arguments filed August 29, 2007, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 13-25 have been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by the added limitations that the first pumps are driven by a rotor (e.g. claim 1 line 3-5) and the second hydraulic motor (e.g. claim 21).

Applicant argues that Cros does not disclose the size of the first pumps and motor, such that the motor shaft speed is always greater than the pump shaft speed. Applicant is mistaken. Cros states that known couplers use a "multiplier which is intended to take into account the low speed of the transducer with respect to the nominal speed of the generator" (column 1 line 20-24). This clearly indicates that the characteristics of this type of system means that the pump shaft speed is always less than the motor shaft speed.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 21, 22 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21 line 2-3 "at least one of the plurality of first pumps is coupled to a hydraulic motor coupled to a second turbine" is wrong. The disclosure shows first and second turbines, each driving a pump (24, 24a), with the output of each pump going to only one motor (37). There is no second hydraulic motor.

Claims 22 and 25 are indefinite, since they depend from claim 21.

***Claim Rejections - 35 USC § 103***

Claims 13-16 and 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Cros in view of Hople. Cros discloses a marine turbine installation comprising first and second turbines having respective rotors (1a, 1b) having respective output shafts (2a, 2b) and positionable in a body of water; wherein a hydrostatic transmission includes at least a plurality of first pumps (17, 19) coupled to each output shaft and have outputs fluidly coupled to an inlet of a hydraulic motor (e.g. 6a); wherein the motor is coupled to a drive shaft (e.g. 7a) of a generator (e.g. 8a); wherein an outlet of the motor is coupled to the inlet of the first pumps; but does not disclose that the motor is a pelton wheel; that a filter is coupled to a header tank for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet of the first pump; that a return plenum is coupled to the outlet of the motor; or that a pressure plenum and a pressure balancing tank are coupled between the first pumps and the inlet of the motor.

Hople teaches, for a marine installation comprising a hydrostatic transmission including a plurality of first pumps (4) having an output fluidly coupled to an inlet of a hydraulic motor (9); wherein the motor is coupled to a drive shaft of a generator (10); wherein an outlet of the motor is coupled to the inlet of the first pumps; that a filter (column 4 line 23-29) is coupled to a header tank (6) for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet of the first pump, by a first main line; that a return plenum (manifold connecting the first pumps to the first main line) is coupled to the outlet of the motor; that a pressure plenum (manifold connecting the first pumps to a second main line) and a pressure balancing tank (8) are coupled between the first pumps and the inlet of the motor; and that the motor is a pelton wheel;

Since the hydrostatic transmissions of Cros and Hople are interchangeable in the marine installation art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the hydrostatic transmission of Cros with a hydrostatic transmission which includes a filter coupled to a header tank for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet of the first pump; a return plenum is coupled to the outlet of the motor; and a pressure plenum and a pressure balancing tank are coupled between the first pumps and the

inlet of the motor, and wherein the motor is a pelton wheel, as taught by Hople, as a matter of engineering expediency.

Claims 18-21; and 22, 24 and 25, inasmuch as they are definite, are rejected under 35 U.S.C. § 103 as being unpatentable over Cros in view of WO00/50768, as applied to claims 13-16; and 23 above, and further in view of Hople. The modified Cros discloses all of the elements of claims 18-22, 24 and 25; but does not disclose that the rotors are coupled to a support column fixed to a substrate lying below the body of water.

WO00/50768 teaches, for a marine turbine installation comprising turbine having a rotor (34) with an output shaft (23) and positionable in the body of water; that the turbine is coupled to a support column (1) fixed to a substrate (3) lying below a body of water (5).

Since Cros doesn't show details of how the turbine is mounted in the water and WO00/50768 does, it would have been obvious at the time the invention was made to one having ordinary skill in the art to couple the turbine of Cros to a support column fixed to a substrate lying below a body of water, as taught by WO00/50768, as a matter of engineering expediency.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571- 272-4821. The examiner can normally be reached on Monday-Thursday from 6:10 AM -3:40 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
November 14, 2007